ANALYSIS OF ORIGINAL BILL

Franchise Tax Board

Author:	Margett	Analyst:	Jane Tolman	Bill Number:	SB 121
Related Bills:	See Legislative History	Telephone:	845-6111		February 3, 2003
		Attorney:	Patrick Kusiak	Sponsor:	

SUBJECT: Long-Term Care Or Long-Term Care Insurance Credit

SUMMARY

This bill would allow a credit for amounts paid or incurred for long-term care insurance or long-term care expenses.

PURPOSE OF THE BILL

It is the author's intent for this bill to help those individuals who incur the expense of long-term care or pay for long-term care insurance.

EFFECTIVE/OPERATIVE DATE

As a tax levy, this bill would become effective immediately upon enactment and would be operative for tax years beginning on or after January 1, 2003.

POSITION

Pending.

ANALYSIS

FEDERAL/STATE LAW

Under federal law, qualified long-term care insurance means any insurance that provides protection for long-term care services. Qualified long-term care services means services necessary to diagnose, prevent, cure, treat, mitigate, rehabilitate, and maintain or provide personal services to a chronically ill individual. A chronically ill individual is generally defined as an individual certified annually by a licensed health care practitioner as unable to perform without substantial assistance at least two of the following activities of daily living (ADLs): eating, toileting, transferring, bathing, dressing, and continence. A chronically ill individual also includes someone who requires substantial supervision to be protected from health and safety concerns due to severe cognitive impairment.

Current federal law specifically allows a deduction for medical expenses for the unreimbursed expenses for qualified long-term care services provided to the taxpayer, the taxpayer's spouse, or the taxpayer's dependents. This deduction is only allowed to the extent that it exceeds 7.5% of the taxpayer's adjusted gross income.

Board Position:			Department Director	Date
____ S	____ NA	____ NP	Gerald H. Goldberg	03/14/03
____ SA	____ O	____ NAR		
____ N	____ OUA	__X__ PENDING		

Long-term care insurance premiums are deductible on a graduated scale based on the individual's age before the close of the taxable year.

Age of Individual	Maximum Deduction
40 or less	$200
More than 40 but less than 50	375
More than 50 but less than 60	750
More than 60 but less than 70	2,000
More than 70	2,500

Current California law conforms to these federal tax provisions related to long-term care.

California law also allows a tax credit to eligible caregivers. The credit is $500 for each qualifying individual who has been certified to need long-term care. A qualifying individual may be the taxpayer, spouse of the taxpayer, or a qualifying dependent, as defined. The credit is not allowed to married couples filing jointly with an adjusted gross income of $100,000 or more or to other individuals with adjusted gross income of $50,000 or more. This credit is allowed for taxable years beginning on or after January 1, 2000, and before January 1, 2005.

THIS BILL

This bill would allow a credit equal to 30% of the cost of long-term care or long-term care insurance for a taxpayer or the taxpayer's parent. The credit shall not exceed $300 for each taxpayer or $600 for taxpayers filing jointly.

This bill would define "long-term care insurance" by reference to federal law. "Parent" would include any natural, biological, or adoptive mother or father of the taxpayer.

This bill would require a long-term care facility or home care giver to provide the taxpayer with written verification of the payments made by the taxpayer for long-term care, the individual receiving the care, and the time period covered.

Any credit that exceeds the taxpayer's tax liability may be carried forward indefinitely.

IMPLEMENTATION CONSIDERATIONS

This bill would require the long-term care facility or home care giver to provide the taxpayer with written verification. Language of this type in tax law normally specifies that the taxpayer would be required to provide the written verification to the department upon request. It would be helpful for the department in administering this credit if this language were added to the bill.

This bill does not specify a repeal date or limit the number of years for the carryover period. Credits typically are enacted with a repeal date to allow the Legislature to periodically review their effectiveness. However, even if a repeal date were added, the department would be required to retain the carryover on the tax forms indefinitely because an unlimited credit carryover period is allowed. Recent credits have been enacted with a carryover period limitation since experience shows credits are typically used within eight years of being earned

This bill uses an undefined term, “long-term care services.” The absence of a definition for this term could lead to disputes with taxpayers and would complicate the administration of this credit.

The department interprets this credit as a per taxpayer credit, rather than a per eligible person (taxpayer, spouse, parents) credit. If a taxpayer were paying long-term care insurance for themselves, their spouse, and both of their parents, they would only be eligible for a $300 maximum credit ($600 if joint return). However, since it is not clear that this credit would be per taxpayer, the author may wish to consider clarifying the intent of the bill.

Department staff is available to work with the author’s office to resolve these concerns and others that may be identified.

LEGISLATIVE HISTORY

AB 2096 (Davis, 1999/2000) would have allowed a $500 credit to taxpayers who provide long-term care to elderly individuals who reside with the taxpayer. AB 2096 failed to pass the Assembly Revenue and Taxation Committee.

AB 511 (Alquist, Ch. 107, Stats. 2000) created the tax credit for eligible caregivers discussed above under “State Law."

AB 2871 (Correa, Ch. 105, Stats. 2000) would have created the tax credit for eligible caregivers discussed above under state law. This act was chaptered out by AB 511 (Ch. 107, Stats. 2000).

AB 2617 (Liu, 2001/2002) would have allowed long-term care insurance to be excluded from income as part of a cafeteria plan. This bill failed to pass the Assembly Revenue and Taxation Committee.

AB 1691 (Margett, 2001/2002) would have allowed a credit to taxpayers for amount paid for long-term care insurance or long-term care expenses. This bill failed to pass the Senate Revenue and Taxation Committee.

OTHER STATES’ INFORMATION

Minnesota and *New York* provide a credit comparable to the credit allowed by this bill. *Illinois, Massachusetts*, and *Michigan* do not provide a credit comparable to the credit allowed by this bill.

The laws of these states were reviewed because their tax laws are similar to California’s income tax laws.

FISCAL IMPACT

Once the implementation concerns are resolved, this bill would not significantly impact the department’s costs.

ECONOMIC IMPACT

Revenue Estimate

Due to data limitations, it is possible to provide only generalized estimates for each category of long-term care. However, significant revenue losses would result, possibly on the order of $150 million annually beginning in 2003-04. Estimates assume that the proposed credit is in addition to any other existing tax benefits for costs incurred for long-term care or long-term care insurance.

Revenue Discussion

The revenue impact of this bill would be determined by amounts incurred for any long-term care or for long-term care insurance premiums by a taxpayer for the benefit of the taxpayer or a parent, and the amount of credits that could be applied to reduce tax liabilities. In the initial tax year for the proposed credit (2003), approximately 500,000 individuals could benefit from an average tax credit of $300.

According to the Department of Aging, there are about 100,000 individuals in long-term care facilities in California. Medicare or private insurance covers approximately one-third of these individuals; Medi-Cal covers the others. If one-half of those covered by Medicare or private insurance are taxpayers and have a tax liability with which to apply the maximum proposed credit of $600 or $300 (depending upon filing status), revenue losses would be on the order of $5 million. Those individuals receiving care in assisted-living facilities, adult day health care facilities, or in the home could easily exceed 100,000. The revenue loss impact for the latter categories could approach $30 million (100,000 times an average credit of $300).

The insurance component of the proposed credit was derived by (1) projecting the net number of policies in force each year by California resident taxpayers (approximately 450,000 by 2003); (2) multiplying the number of policies by 30% times the average annual premium of $1,700 up to a maximum of $300; and (3) calculating and applying an "inducement to purchase" rate that increases incrementally each year. The revenue loss for this component for the first year is projected to be on the order of $100 million.

Based on national data, the number of policies in force in California is projected to grow to roughly 450,000 by 2003 and 500,000 by 2005. An average annually premium of $1,700 is used for the estimate. According to industry contacts, most long-term care insurance premiums range from $1,000 to $3,000 annually.

ARGUMENTS/POLICY CONCERNS

Expenditures for insurance or for care services that are eligible for this credit would not be limited to California residents. Thus an individual in any state or country who has a California income tax liability could claim the credit. However, it would be unconstitutional to restrict this credit to California residents. Since insurance is sold internationally, there may not be an effective way to limit the credit for the insurance part of the bill. The bill could be amended to require that expenditures for care services be limited to those services administered in California.

This bill would allow taxpayers in certain circumstances to claim this new credit as well as both the existing eligible caregiver credit and the deduction for medical expenses. Taxpayers are not generally allowed multiple tax benefits for the same expense.

This bill would allow a new credit for natural or adopted parents, even if the parent is not a dependent of the taxpayer. The medical expense deduction is allowed on natural or adopted parents or in-laws if the parent is a dependent. To prevent the same expenses from being claimed for both the credit and the deduction, the author may wish to make this credit in lieu of the deduction.

LEGISLATIVE STAFF CONTACT

Jane Tolman
Franchise Tax Board
845-6111
Jane.Tolman@ftb.ca.gov

Brian Putler
Franchise Tax Board
845-6333
Brian.Putler@ftb.ca.gov